IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 565 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 565 of 1997

MR MS DESAI (amicus curiae) for Petitioner No. 1

Ms. Nandini Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2003

ORAL JUDGEMENT

This appeal was listed for final hearing on relevant board. Mr N B Tiwari, learned Advocate

appearing for the appellant did not appear on some occasions and there was no mentioning on his behalf. This being criminal appeal against conviction, it was not found proper to dismiss it for default. It was also not found proper to hear the appeal ex-parte. Therefore, with a view to have proper assistance to represent the case on behalf of the appellant-oroginal accused, Mr M.S. Desai, an Advocate practising in this court having a long experience in the judiciary as well as at bar, was requested to assist the court. He was very much willing to assist the court. Therefore, he was appointed as Advocate amicus curiae to represent the case of the appellant and, therefore, he has appeared on behalf of the appellant in the present case.

2. This is an appeal filed by the appellant-original accused, challenging the judgment and conviction order recorded by the learned Addl.Sessions Judge, City Sessions Court of Ahmedabad on 13.5.1997 in Sessions Case No.166/92 under which the learned Addl.Sessions Judge found the present appellant guilty for an offence under section 307 of IPC. The learned Judge passed an order requiring the appellant to suffer R.I. for 7 years and to pay fine of Rs.5000/-. In default of payment of fine, the appellant was required to further undergo R.I. for three months. The learned Judge also directed that in case the fine is realised then an amount of Rs.4000/shall be paid to the injured as compensation.

3. The facts of the case of the prosecution before the trial court may be briefly stated as follows:

Injured eye witness Ashokbhai Jethalal - Exh.16 was staying in Pritampura society at Ahmedabad. On 27.1.1991, he was proceeding from his house for taking pan near Mahalaxmi temple and he was crossing the road. The present appellant rushed to him and inflicted so many blows with gupti on his abdomen, thighs as well as on his armpit. The appellant raised shouts and, threfore, the persons sitting in the vicinity rushed to the spot. But in the meantime, the appellant had run away and the injured was taken to the hospital. There the appellant narrated the story to the doctor and to the police constable which was reduced into writing. Thereafter the police constable sent the information to the concerned Shahibaug police station where an offence was registered. The Investigating Officer conducted investigation, panchnama of the scene of offence was drawn, statements of injured and other witnesses were recorded and muddamal article was seized. The muddamal article produced by the appellant was also seized, injury certificate was

obtained from the Medical Officer. In the meantime, as the injuries were received by the injured on vital parts of the body, the Investigating Officer found it proper to refer the matter to the Executive Magistrate for recording the dying declaration. Accordingly, dying declaration was recorded by the Executive Magistrate and it was kept on records of the investigation papers.

4. At the end of the investigation, charge sheet was filed against the appellant and since the offence punishable under section 307 of IPC against the appellant was one exclusively triable by the court of Sessions, the case was committed to the Sessions Court where it was registered as Sessions Case No.166/92. The learned Judge supplied copies of police investigation papers to the appellant. Charge Exh.1 was framed and it was read over and explained to the appellant on 10.11.1993. The appellant pleaded not guilty to the said charge in the course of his statement and, therefore, the trial court proceeded to record the evidence produced by the prosecution. During the course of the trial, the prosecution examined the following witnesses:

PW 1 Jethalal Bhavanbhai Jadav Exh.14
PW 2 Ashohbhai Jethalal Jadav Exh.16
PW 3 Baldevbhai Ramjibhai Exh.22
PW 4 Govindlal Shankarlal Parmar Exh.23
PW 5 Rajnikant Parmar Exh.26
PW 6 Harishbhai Naranbhai Chauhan Exh.29
PW 7 Mohansingh Vaghela Exh.34
PW 8 Ramanbhai M Patni Exh.37
PW 9 Dashratji Ranchhodji Exh.39
PW 10 Narendrakumar I Makwana Exh.40
PW 11 Dr Kirit Popatlal Patel Exh.43
PW 12 Jivabhai R Prajapati Exh.48

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5. The trial court also received documentary evidence produced by the prosecution during the course of the said trial. On conclusion of the evidence, the learned Judge recorded further statement of the appellant-accused under section 313 of the Code. Opportunity was provided to the appellant to explain the circumstances appearing in evidence against him. Arguments were heard and thereafter, the learned Judge found that the appellant was guilty for committing the offence punishable under section 307 of IPC. However, the trial court found that the appellant was not proved to be guilty for offence punishable under section 37(1)

read with section 135 of the Bombay Police Act. Therefore, the learned Judge convicted the appellant for offence punishable under section 307 of IPC and acquitted him for the remaining offence. After hearing the appellant on the quantum of sentence, the learned Judge sentenced the appellant to suffer R.I. for seven years. The learned Judge also directed the appellant to pay fine of Rs. 5000/-. In default of payment of fine, the appellant was ordered to suffer further R.I. for three months.

6. Feeling aggrieved by the said judgment and conviction order of the said Court, the appellant has preferred this appeal before this Court. It has been contended here that the trial court has not appreciated the evidence properly. That there were material contradictions in the evidence of the eye witness, that other witnesses have not supported the case of the injured. That identification of the appellant at the time of the incident was not free from doubt, that there was previous enmity between the appellant and the injured and, therefore, the appellant was falsely involved in the offence. That therefore, these aspects were required to be considered in its proper perspectives which has not been done. The appellant, therefore, contended that he has been wrongly convicted for the aforesaid offence. Therefore, the appeal may be allowed, the judgment and conviction order recorded against him may be set aside, the appellant may be acquitted of the offence punishable under section 307 of IPC and he may be set at liberty forthwith.

7. The appeal was admitted and was placed on final hearing board. Mr N B Tiwari, learned Advocate for the appellant was absent and, therefore, with a view to provide an opportunity to the appellant, appointment of Mr M S Desai, learned Advocate was made as referred to hereinabove. Mr M S Desai, learned Advocate has argued the matter on behalf of the appellant. Ms. Nandini Joshi, learned APP has argued the matter on behalf of the State. They have also taken me through oral and documentary evidence as well as through the observations of the trial court.

8. If we go through the evidence on record, it is very clear that PW 1, Jethalal Yadav is a witness who has been examined at Exh.14. He was not a witness to the incident. However, he is the father of the injured and on receiving the information that his son received injuries at the hands of the appellant, he directed his another son to go to the hospital and he went to the

police station. In the meantime, he also went to the hospital and saw the condition of his son.

9. Then we can turn the evidence of Ashokbhai Jethalal, PW 2 at Exh.16. He is the injured eye witness. He has deposed before the trial court that on 27.1.1991 he was proceeding on the road after taking his meal at about 8 p.m. That there is a Mahalaxmi temple by the side of the society and there is a pan galla by the side of the road. That he was on the way to the pan galla and there, 4 to 5 boys who were sitting on the otta. That while he was on the way to the said pan galla, the appellant rushed to him and inflicted blows with gupti on his abdomen, thigh and armpit. That he raised shouts and the persons in the vicinity rushed to the spot. But in the meantime, the appellant had run away. That thereafter he was taken to the hospital and he was there in the hospital for 27 days. He has identified the clothes put on by the appellant at the time of the incident. The witness was cross-exmined at length and an attempt was made to contradict him with earlier statement recorded by the Investigating Police Officer. However, except a couple of contradictions, no further contradictions could be gathered from the lengthy cross-examination of this witness. The witness stood the test on cross-examination and nothing adverse has been brought out during the course of lengthy cross-examination. An attempt, therefore, was made to argue that on account of darkness prevailing around the spot, it was not possible for the injured person to identify the appellant. The witness has very clearly deposed that the appellant was known to the injured person and there was enmity between the two also. Even the appellant has come out with the case that there was enmity between the two. When enmity has been pleaded by both, it would be reasonable to infer that the injured person actually knew the appellant and, therefore, he was in a position to identify the appellant. It is also required to be seen that the injuries were inflicted on the abdomen, thigh and armpit. By and large the injuries are on the front part of the body of the injured. Therefore, the assailant must have been in the front of the injured when the injuries were inflicted. As many as seven blows have been inflicted. This would have taken some time. During the said passage of time, the assailant was in front of the injured eye witness. Therefore, the injured eye witness had all opportunities to see the appellant from the very near vicinity. In that view of the matter, when the appellant and injured were known to one another and when the injured was very closed to the appellant at the time of the commission of

the offence, the light factor cannot come in the way of the injured in identifying the appellant. It is more so, when it has come out during the course of evidence of the Investigating Police Officer that light was there. This was a public road. It was about 8 p.m. and, therefore, it can reasonably be inferred that there was sufficient light in order to enable the injured to identify the appellant. Therefore, it is not acceptable to this court that the injured could not identify the appellant. Therefore, the arguments advanced by Mr M S Desai, learned Advocate for the appellant about the doubtful identity of the appellant is not acceptable to this court also.

10. There are other witnesses also. Out of them, Baldevbhai, PW 3, Exh.22 is one of those who had rushed to the injured after the injured raised shouts after receiving the injuries. He has deposed that he had rushed to the injured on hearing the shouts. That at that time, the assailant had run away but the injured had told him that the appellant had caused injuries to him. This shows that name of the appellant was disclosed to this witness by the injured on the spot itself. This was in a fraction of seconds from the commission of offence. This witness has not been cross-examined on the aforesaid aspect of the case. Therefore, there is no reason to disbelieve the evidence given by this witness.

10.1. Govindlal S Parmar, PW 4, Exh.23 is the Executive Magistrate who had recorded the dying declaration of the injured. Since the injured is alive, the dying declaration would lose its importance. When it has been referrred by the learned Advocate for the appellant during the course of arguments, it would be sufficient to say that the dying declaration also supports the case of the prosecution disclosing the name of the appellant as the assailant.

10.2. PW 5, Rajnikant Parmar is a panch witness. He has turned hostile and does not support the prosecution. Even PW 6, Harishbhai Chauhan, Exh.29 also does not support the prosecution.

11. There is the evidence of PW 7 Mohansingh Vaghela Exh.34 who was the officer incharge of the Shahibaug police station on the relevant date. According to his evidence, he had received information from the Civil Hospital at Ahmedabad at 12.10 p.m. which was reduced into writing. He has produced the said entry at Exh.35 which discloses the fact that the appellant had caused the aforesaid injuries to the injured by means of gupti.

Therefore, it can be said that at the earliest point of time, name of the appellant has been disclosed by the injured eye witness.

11.1. PW 8 Ramanbhai Patni, Exh.37 was a Constable on duty at the Civil Hospital on 27.1.1991. According to him, the Medical Officer had called him on 27.1.1001 at 11.55 p.m. and he was told that as per the information, the appellant had inflicted gupti blows on the injured eye witness. This information was reduced into writing in the Register. Thereafter, the witness conveyed this fact to Shahibaug police station. The entry posted by this witness has been produced at Exh.38 which fully corroborates the case of the prosecution. It discloses name of the appellant and of the injured eye witness and it also shows that the injuries were caused by means of gupti.

11.2. PW 9, Dashratji Ranchhodji is a panch witness at Exh.39. He does not support the case of the prosecution about the discovery or recovery of the muddamal weapon. Then we find evidence of PW 14, Narendrakumar Ishwarlal Makwana at Exh.40. He was also declared hostile by the prosecution.

11.3. Dr. Kirit Popatlal Patel at Exh.43 is the Medical Officer who had examined the injured in the hospital, who was brought there under a police yadi. According to the evidence of this witness, the injured had at least 9 incise wounds on his person. Some of them were on the abdomen and some of them were on the thigh. The evidence of this witness clearly corroborates the testimony of the injured eye witness. His evidence is further supported by the injury certificate and the case record produced by him during the course of his evidence.

11.4. Jivabhai Prajapati, PW 12 at Exh.48 is the Investigating Officer. He has given account as to how he prosecuted the investigation. It would be relevant to consider that according to his evidence, there was sufficient light on the spot. This witness was also cross-examined on behalf of the appellant. Nothing fruitful was derived from his cross-examination. On appreciation of the above evidence, the evidence of the injured eye witness has been amply supported by other witnesses including the witnesses who have come to the spot. Medical evidence also supports the case of the prosecution. Even FIR and the entries in the police register also support the case of the prosecution. In above view of the matter, it can be said that no error or illegality has been committed by the trial court in

appreciation of the evidence of the witnesses before the trial court. As said above, looking to the reasons given hereinabove, it could not be said that the injured could not identify the appellant. Same way, simply because it was night, there was no difficulty for the injured in identifying the appellant. Even if there was enmity, the enmity was not a recent one and it could not be a ground for falsely implicating the present appellant. It is more so, when the name of the appellant was disclosed right on the spot within a fraction of seconds from the commission of offence. So far as the contradictions are concerned, in fact, there is no material contradiction between the oral evidence of the injured and in his police statement or in the complaint. The fact remains that at the very outset, name of the appellant was disclosed on the spot itself and also before the Medical Officer. There was no reason for the injured at that stage to falsely implicate the appellant in a serious offence like the one punishable for imprisonment of life. The enmity is not found to be so grave so as to falsely involve the appellant in such a grave offence. In above view of the matter, the evidence on record is sufficient to hold the appellant guilty. The trial court has given sufficient and cogent reasons for accepting the evidence on record. Even looking to the tenure of cross-examination, it can be gathered that by and large, the facts in dispute have not been seriously challenged during the cross examination and the cross-examination has been taken very lightly. In fact, a lengthy cross-examination was not required to be faced by the witnesses in this matter. When the injured eye witness is found to be reliable and when his evidence is amply supported by other direct and documentary evidence, there is no reason to differ from the view taken by the trial court. In other words, it cannot be said that the trial court has committed an error in convicting the appellant. I am also of the opinion that the evidence of the injured eye witness corroborated by other materials on record referred to hereinabove, is found to be trustworthy and acceptable and once the evidence is acceptable, there is no alternative but to hold that the appellant and the appellant alone who had caused the aforesaid injuries to the person of the injured. Looking to the nature of the injuries and considering the weapon used and considering the vital part of the body selected for causing injuries, it has to be held that the appellant actually committed an attempt to commit the murder of the injured witness. Therefore, the trial coaurt was justified in convicting the appellant for an offence punishable under section 307 of IPC. There is no reason to interfere with the said findings of the trial court. In other words, there is no

merit in the present appeal and the same deserves to be dismissed.

15. For the foregoing reasons, this appeal is ordered to be dismissed. The judgment and conviction order recorded by the trial court are confirmed.

At this stage, it would be appropriate to record a word of appreciation for the service rendered by Mr M S Desai, learned Advocate, amicus curiae, to assist the court in absence of Mr N B Tiwari, Advocate who was engaged by the appellant to argue out the case.

24.1.2003 [D P Buch, J.]
msp